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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

JOSEPH BILLINGS,

Cross-complainant and Appellant,

v.

JEREMY J. OFSEYER et al.,

Cross-defendants and Respondents.

E048179

(Super.Ct.No. MCVMS08151)

OPINION

APPEAL from the Superior Court of San Bernardino County. Thomas S. Garza, Michael A. Sachs and Larry W. Allen, Judges. Affirmed.

Joseph Billings, in pro. per., for Cross-complainant and Appellant.

Waxler Carner Brodsky, Andrew J. Waxler and Scott K. Murch for Cross-defendants and Respondents Jeremy J. Ofseyer and Nethery & Ofseyer, LLP.

Reback, McAndrews, Kjar, Warford & Stockalper, Robert C. Reback and Cindy A. Shapiro for Cross-defendants and Respondents Robert Warford and Reback, McAndrews & Kjar, LLP.

Musick, Peeler & Garrett, Wayne B. Littlefield and Teresa Cho for Cross-defendant and Respondent Lawyers' Mutual Insurance Company.

Antoinette Billings (Antoinette) sued her brothers, John Billings (John) and Joseph Billings (Joseph), to quiet title to a parcel of real property.<sup>1</sup> Antoinette also sued John's alleged attorney, D.M. Davis (Davis) for malpractice. Joseph filed a third amended cross-complaint against (1) Antoinette; (2) Antoinette's trial attorney, Jeremy J. Ofseyer (Ofseyer); (3) Ofseyer's law firm, Nethery & Ofseyer, LLP (Nethery & Ofseyer); (4) Davis's malpractice insurer, Lawyers Mutual Insurance Co. (Lawyers Mutual); (5) Davis's malpractice defense lawyer, Robert Warford (Warford); (6) Warford's law firm, Reback, McAndrews & Kjar, LLP (RMK); (7) Antoinette's bankruptcy attorney, Paul Toscano (Toscano); and (8) Toscano's law firm, Paul Toscano, P.C. The details of Joseph's causes of action will be presented in the "Facts" section.

Ofseyer and Nethery & Ofseyer filed the first anti-SLAPP<sup>2</sup> motion against Joseph's third amended cross-complaint. (Code Civ. Proc., § 425.16.)<sup>3</sup> Lawyers Mutual filed the second anti-SLAPP motion against Joseph's cross-complaint.

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<sup>1</sup> We will refer to the parties by their first names for clarity and ease of reference; no disrespect is intended.

<sup>2</sup> "SLAPP" refers to a strategic lawsuit against public participation. (Code Civ. Proc., § 425.16; *McConnell v. Innovative Artists Talent and Literary Agency, Inc.* (2009) 175 Cal.App.4th 169, 175.)

<sup>3</sup> All further statutory references will be to the Code of Civil Procedure unless otherwise indicated.

(§ 425.16.) Warford and RMK filed the third anti-SLAPP motion against the cross-complaint. (§ 425.16.) The trial court granted the three anti-SLAPP motions.

Joseph Billings contends that the trial court erred by granting the three anti-SLAPP motions because (1) Lawyers Mutual, Warford, RMK, Ofseyer, and Nethery & Ofseyer (collectively, the Lawyers) did not have standing to bring their anti-SLAPP motions; (2) the trial court lacked jurisdiction to conduct the anti-SLAPP motion hearing; (3) the trial court denied Joseph due process; (4) Joseph established prima facie cases on all of his causes of actions against the Lawyers; and (5) the trial court incorrectly awarded attorneys' fees to the Lawyers. We affirm the judgments.

### **FACTUAL AND PROCEDURAL HISTORY**

We present a comprehensive history of the litigation in the instant case, rather than limiting our presentation to the facts directly pertaining to the anti-SLAPP motions, because it is useful when analyzing the issues presented on appeal.

#### **A. ANTOINETTE'S VERIFIED FIRST AMENDED COMPLAINT**

Antoinette, represented at trial by Ofseyer of Nethery & Ofseyer, filed a verified first amended complaint against Davis, John, and Joseph. In her complaint, Antoinette alleged that she and her father, Henry Billings (Henry), took title to a parcel of real property in Yucca Valley (the property) as joint tenants, in July 1996. On December 27, 2006, Henry died.

A quitclaim deed dated December 12, 2006, but filed by Davis 12 days after Henry's death on January 8, 2007, purported to convey Henry's undivided one-half interest in the property to himself and Antoinette as tenants in common. The December

12 deed was allegedly invalid; however, it purportedly served to end the joint tenancy. Henry's will purported to devise his one-half interest in the property to John and Joseph, and therefore John and Joseph contended that they were the owners of a one-half interest in the property, based upon the December 12 deed and Henry's will.

Antoinette's complaint sought (1) to quiet title to the property against John and Joseph; (2) to enjoin John and Joseph from interfering in Antoinette's use of the property; (3) a finding that Davis slandered Antoinette's title to the property by filing the allegedly invalid December 12 deed; and (4) a finding that Davis's filing of the December 12 deed constituted legal malpractice.

#### B. JOSEPH'S THIRD AMENDED CROSS-COMPLAINT

Joseph filed a third amended cross-complaint on September 16, 2008.<sup>4</sup> Joseph named a variety of people and entities as cross-defendants, including (1) Antoinette; (2) Ofseyer; (3) Nethery & Ofseyer; (4) Warford; (5) RMK; (6) Lawyers Mutual; (7) Toscano; and (8) Paul Toscano, P.C.

##### 1. *ANTOINETTE & THE PROPERTY*

In regard to Antoinette and the property, Joseph made the following allegations in his complaint: Henry and his wife, Florence Billings (Florence), purchased the property as joint tenants in 1960. In 1996, when Florence was dying, Henry and Florence terminated their joint tenancy. Henry and Florence asked Antoinette to hold the property as a cotenant trustee with Henry, in trust for herself, Joseph, and John.

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<sup>4</sup> Within this opinion, the term "Joseph's complaint" refers to Joseph's third amended cross-complaint.

Antoinette promised to distribute the property amongst the siblings in one-third shares upon Henry's death.

Based upon Antoinette's promise, Henry, John, and Joseph did not have their interests recorded in writing. In December 2006, Henry, out of an abundance of caution, executed a severance deed and a will, which devised his one-half interest in the property to John and Joseph, i.e., the December 12 deed.

## 2. *THE LAWYERS*

In regard to the Lawyers, Joseph's complaint included the following allegations: Davis was John's attorney, and Joseph was John's intended beneficiary of Davis's services. Lawyers Mutual provided Davis with malpractice insurance. Ofseyer, Lawyers Mutual, Warford, and RMK colluded to disrupt Davis's attorney-client relationship with John, and his intended beneficiary, Joseph, in order to prevent John and Joseph from prevailing in the litigation concerning the property.

Joseph alleged the following details of the Lawyer's conspiracy: Warford and RMK were retained by Lawyers Mutual to represent Davis in Antoinette's malpractice action. Warford and RMK intentionally did not assert Davis's affirmative defenses in Antoinette's malpractice action. Warford and RMK also included false admissions in Davis's answer to Antoinette's complaint, which were designed to harm John and Joseph's quiet title action. Lawyers Mutual, Warford and RMK then invited Ofseyer to file a motion for a judgment on the pleadings based upon the inadequate answer filed by Warford and RMK. In response to Warford and RMK's filing of the inadequate answer, Ofseyer agreed to waive all of Antoinette's claims against Davis, and move only for a

judgment quieting title to Antoinette. Based upon the foregoing conspiratorial arrangement, Warford and RMK agreed not to oppose Ofseyer's motion, and agreed to discourage Davis from opposing the motion. As a result, Antoinette would receive all the rights and interests in the property, and the only cost would be those associated with the preparation and filing of the inadequate answer.

### 3. *CAUSES OF ACTION*

Joseph's complaint includes many causes of action against Antoinette, the Lawyers, and Toscano. We briefly summarize the relevant causes of action: First, Joseph sought to quiet title against Antoinette. Joseph alleged that Antoinette engaged in a variety of deceptive acts, and therefore John and Joseph should be declared the sole owners of the property.

Second, Joseph alleged that Antoinette slandered his title to the property by intentionally recording a false "Affidavit of Death of a Joint Tenant" at the San Bernardino County Recorder's Office.

Third, Joseph claimed that Ofseyer, and Nethery & Ofseyer executed a lien against the property to secure Antoinette's legal fees, thereby slandering his title to the property.

Fourth, Joseph sought cancellation of (1) Nethery & Ofseyer's lien against the property; (2) the quitclaim deed executed by Henry in July 1996; and (3) the "Affidavit of Death of a Joint Tenant" executed by Antoinette. Further, Joseph claimed that the cross-defendants' failure to cancel the aforementioned documents caused him to suffer emotional distress.

Fifth, Joseph alleged the Lawyers maliciously interfered with John and Davis's attorney-client relationship.

Sixth, the Lawyers abused the judicial process by using it to carrying out their conspiratorial plan to interrupt John and Davis's attorney-client relationship.

Seventh, Joseph sought preliminary and permanent injunctions prohibiting the Lawyers from interfering with Davis's confidential communications with John and Joseph.

C. ANTI-SLAPP MOTIONS

1. *OFSEYER AND NETHERY & OFSEYER*

Ofseyer and Nethery & Ofseyer argued that Joseph's causes of action against them arose from Ofseyer's prosecution of Antoinette's complaint, and therefore should be stricken pursuant to the anti-SLAPP statute, because prosecuting a complaint is a protected activity.

The trial court found that Joseph's causes of actions arose from Ofseyer and Nethery & Ofseyer's protecting petitioning activity. Further, the trial court found that Joseph did not demonstrate that he was likely to prevail on his abuse of process claim against Ofseyer and Nethery & Ofseyer, because Joseph did not demonstrate an abuse of the court's power. Additionally, the trial court found that Joseph was not likely to prevail on his claims of malicious interference because he did not prove that a duty was owed to him. Finally, the trial court found that Joseph's causes of action were barred by the litigation privilege (Civ. Code, § 47). In sum, the trial court granted Ofseyer and Nethery & Ofseyer's anti-SLAPP motion.

## 2. *LAWYER'S MUTUAL*

Lawyers Mutual also filed an anti-SLAPP motion against Joseph's complaint. Lawyers Mutual asserted that Joseph was seeking to penalize them for exercising their right to participate in litigation, which is a protected activity. Lawyers Mutual also argued that Joseph was not likely to prevail upon his claims against Lawyers Mutual because (1) Joseph's causes of action were barred by the litigation privilege, and (2) Lawyers Mutual did not owe a duty of care to Joseph.

The trial court found that the causes of action against Lawyers Mutual arose from Lawyers Mutual's protected petitioning activity. The court found that Joseph failed to show that Lawyers Mutual abused the power of the court. Additionally, the trial court found that Joseph's claim of malicious interference failed because a duty was not owed to Joseph. Further, the trial court concluded that the abuse of process claim and the malicious interference claims were barred by the litigation privilege. (Civ. Code, § 47.)

## 3. *WARFORD AND RMK*

Warford and RMK filed an anti-SLAPP motion against Joseph's complaint. Warford and RMK asserted that Joseph was attempting to penalize them for defending Davis in the legal malpractice action. Warford and RMK argued that their representation of Davis was protected by the litigation privilege. Further, Warford and RMK claimed that Joseph was not likely to prevail on his actions against them, because there was no evidence of an attorney-client relationship between John, Joseph and Davis, and therefore Warford and RMK could not have interfered in the attorney-client relationship.

The trial court found that Joseph's claims against Warford and RMK arose from Warford's and RMK's protected petitioning activity. The trial court struck Joseph's abuse of process claims against Warford and RMK due to Joseph's failure to show that Warford and RMK abused the power of the court. Further, the court granted Warford and RMK's motion to strike Joseph's malicious interference cause of action on the ground that Warford and RMK did not owe a duty to Joseph. Further, the trial court found that both causes of action were barred by the litigation privilege (Civ. Code, § 47). In sum, the trial court granted the anti-SLAPP motion.

### **DISCUSSION**

Joseph contends that (1) Lawyers Mutual, Warford, RMK, Ofseyer, and Nethery & Ofseyer did not have standing to bring anti-SLAPP motions; (2) the trial court denied him due process; (3) the trial court lacked jurisdiction to decide the three anti-SLAPP motions; (4) he established a prima facie case for malicious interference with attorney-client relations, and for abuse of process against the Lawyers; (5) he established a prima facie case for slander of title and cancellation of instruments against Ofseyer and Nethery & Ofseyer; and (6) the trial court committed a variety of errors by awarding attorneys' fees. We disagree with Joseph's contentions.

We address Joseph's contentions concerning the merits of the motions, followed by the procedural contentions, and then the contentions concerning the award of attorneys' fees.

A. MERITS OF THE ANTI-SLAPP MOTIONS

A hearing on an anti-SLAPP motion is conducted in two steps: (1) the defendant demonstrates that the act underlying the plaintiff's cause of action arises from protected activity, i.e., defendant's rights of petition or free speech; and then, if the defendant meets his burden; (2) the plaintiff demonstrates a probability of prevailing on his cause of action. (*In re Episcopal Church Cases* (2009) 45 Cal.4th 467, 477.)

We apply the de novo standard of review to the trial court's rulings on the motions. (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 479.)

1. *PROTECTED ACTIVITY*

In Joseph's opening brief, under the heading concerning standing, Joseph contends the trial court erred by granting Lawyers Mutual's, Warford's, and RMK's anti-SLAPP motions because Joseph's claims against them do not concern protected activities. In other words, a large portion of Joseph's argument does not concern standing, rather, it addresses the first prong of the anti-SLAPP analysis, i.e., whether the parties' activities are protected. We will address this argument, despite Joseph's failure to raise it under a separate heading. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Tilbury Constructors, Inc. v. State Compensation Ins. Fund* (2006) 137 Cal.App.4th 466, 482.)

The anti-SLAPP statute protects parties who are sued as a result of activities that arise from their "right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue . . . ." (§ 425.16, subd. (b)(1).) An "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1)

any written or oral statement or writing made before a . . . judicial proceeding . . . ; [and] (2) any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body . . . .” (§ 425.16, subd. (e).) Thus, “[a] cause of action ‘arising from’ [a] defendant’s litigation activity may appropriately be the subject of a section 425.16 motion to strike.” [Citation.]” (*McConnell v. Innovative Artists Talent and Literary Agency, Inc.* (2009) 175 Cal.App.4th 169, 175.)

“In deciding whether the initial ‘arising from’ requirement is met, a court considers ‘the pleadings, and supporting and opposing affidavits stating the facts upon which the liability . . . is based.’ [Citation.]” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

Joseph’s complaint alleged that Warford and RMK were retained by Lawyers Mutual to defend Davis against Antoinette’s malpractice claim. Joseph asserted that Warford and RMK “refused, obstructed, and prevented confidential consultation between . . . Davis and her client John . . . and intended beneficiary, Joseph.” Additionally, Joseph alleged that Warford and RMK “filed an inadequate answer to . . . Antoinette[’s] action to quiet title, which made false admissions designed to harm attorney Davis’ client, John . . . and intended beneficiary, Joseph.”

Joseph also claimed that Lawyers Mutual, acting through Warford and RMK, invited Ofseyer to file a motion for a judgment on the pleadings, following the false admissions filed by Warford and RMK. Ofseyer allegedly agreed to file a motion for judgment of the pleadings, and waive all claims against Davis. In his complaint, Joseph further asserted that Warford and RMK agreed that they would not oppose the motion

for judgment on the pleadings, and they would discourage Davis from opposing the motion as well, as a condition of continuing her malpractice insurance.

All of the foregoing actions that Joseph complains about “arose from” Warford and RMK’s representation of Davis in Antoinette’s malpractice action, and from Lawyers Mutual’s retention of Warford and RMK to represent Davis. In other words, Warford’s, RMK’s, and Lawyers Mutual’s actions were based in part on written or oral statements or writings made in connection with an issue under consideration by a judicial body, and therefore their actions are protected activities.<sup>5</sup> (§ 425.16, subd. (e).)

Joseph asserts that Lawyers Mutual’s, Warford’s, and RMK’s actions are not protected activities because “illegal activities are not insulated by the First Amendment.” Joseph’s argument confuses the anti-SLAPP analysis. The possible illegality of Lawyers Mutual’s, Warford’s, and RMK’s conduct is relevant to proving that Joseph is likely to prevail on his causes of actions—it is not relevant to proving, or disproving, that the conduct “arose from” petitioning activities. In other words, the fact that a defendant’s alleged activity is illegal does not sway the analysis of whether the activity arose from protected actions, rather, it sways the analysis concerning the plaintiff’s likelihood of prevailing. For example, when looking at the defendant’s actions to determine if they fall within one or more of the categories of protected activities, one of the critical questions to ask is, “Did the defendant’s actions arise from

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<sup>5</sup> We remind the reader that an anti-SLAPP motion will not result in a plaintiff’s cause of action being stricken, unless the cause of action pertains to a protected activity *and* the plaintiff is not likely to prevail on the cause of action. Therefore, an attorney accused of fraudulent conduct associated with litigation activities will not escape a trial merely because his or her activity is “arises from” petitioning.

petitioning a court?” If the answer is yes, then the defendant’s actions most likely arose from a protected activity. If the defendant’s activities were illegal, and there is some proof of such illegal activities, then the plaintiff is likely to prevail on his cause of action, and the anti-SLAPP motion will be denied.

Next, Joseph argues that the delivery of insurance services is not a protected activity. Joseph relies on section 425.17, subdivision (c), which provides that anti-SLAPP motions are not applicable to causes of action arising from a statement or conduct by a person primarily engaged in the business of selling goods or services, such as insurance, if the statement or conduct (1) consists of representations of fact about that person’s or a business competitor’s business operations, goods, or services, that is made for the purpose of obtaining or promoting sales or leases of the person’s goods or services, or the statement or conduct was made in the course of delivering the person’s goods or services; and (2) the intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process.

Joseph’s causes of action concerning Lawyers Mutual do not concern representations of fact about Lawyers Mutual’s or a competitor’s business. Accordingly, we disagree with Joseph’s argument Lawyers Mutual’s activities are exempt from SLAPP protection.

Joseph argues that section 425.17, subdivision (c), was applicable to Lawyers Mutual because (1) it was an insurance company, and (2) its actions arose from the

delivery of services to Davis. We do not find Joseph's argument persuasive, because Joseph is suing Lawyers Mutual based upon its alleged conspiracy to disrupt John and Davis's attorney-client relationship via use of the judicial process. In other words, Joseph is not seeking to hold Lawyers Mutual liable for statements and conduct consisting of representations of fact about Lawyers Mutual business, or statements to an actual or potential buyer.

## 2. *LIKELIHOOD OF PREVAILING*

Joseph contends that the trial court erred when it concluded that he was not likely to prevail on his causes of action against the Lawyers.

We determine whether Joseph has made a prima facie showing of facts necessary to establish his claim at trial, and evaluate the Lawyers' evidence only to determine if it defeats Joseph's showing as a matter of law. (*Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th, 1049, 1071.)

### a) Abuse of Process

"[T]he essence of the tort 'abuse of process' lies in the misuse of the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice." (*Meadows v. Bakersfield Sav. & Loan Assn.* (1967) 250 Cal.App.2d 749, 753.) "To succeed in an action for abuse of process, a litigant must establish two elements: that the defendant (1) contemplated an ulterior motive in using the process; and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings." (*Brown v. Kennard* (2001) 94 Cal.App.4th 40, 44.)

In other words, abuse of process is shown where a defendant acts in a manner not authorized by the process or if the defendant's actions are aimed at an objective that is not a legitimate use of the process; however, the tort does not lie where a defendant "has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." (*Spellens v. Spellens* (1957) 49 Cal.2d 210, 232.) For example, "[t]he improper [use] usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or a club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort." (*Id.* at pp. 232-233, italics omitted.)

(1) *Joseph's Declaration*

In Joseph's declaration in support of his opposition to the Lawyers' anti-SLAPP motions, Joseph declared that the evidence supporting his causes of action for abuse of process "are uniquely and exclusively under cross-defendants' control." Joseph declared that he served Lawyers Mutual and Ofseyer with timely notices of deposition and requests to produce documents. Joseph declared that the trial court denied his ex parte applications to conduct discovery.

(2) *Joseph's Supplemental Declaration*

In a supplemental declaration in support of his opposition to the Lawyers' anti-SLAPP motions, Joseph declared that Larry White (White), an associate at RMK, refused to amend Davis's answer to Antoinette's complaint to remove the false

admission that Antoinette was entitled to the property, and refused to include the family trust agreement as an affirmative defense to Antoinette's malpractice action. White told Joseph that he had ordered Davis not to communicate with John or Joseph. Joseph further declared that Warford admitted to Joseph that he "entered into a collusive arrangement with . . . Ofseyer to deliver" the property to Antoinette "by setting-up a motion for judgment on the pleadings, which [RMK] would not oppose."

(3) *Joseph's Oral Presentation*

At the hearing on the anti-SLAPP motions, Joseph argued (1) the trial court did not have jurisdiction to rule upon the motions due to the alleged untimeliness of the hearing; and (2) Lawyers Mutual did not have standing to bring an anti-SLAPP motion. Joseph did not discuss any evidence during the hearing.

(4) *Warford and RMK's Evidence*

Warford and RMK, in support of their anti-SLAPP motion, included a declaration by Davis. In Davis's declaration, she declared that she never acted as Joseph's attorney. Davis further declared John was her client in 1998; however, in October 1998 the San Bernardino County Superior Court granted Davis's motion to be relieved as John's counsel, and Davis had not represented him since that ruling. Davis declared that she was retained as Henry's attorney in December 2006.

(5) *Ofseyer and Nethery & Ofseyer's Evidence*

Ofseyer and Nethery & Ofseyer, in support of their anti-SLAPP motion, included (1) a declaration by Ofseyer; (2) a variety of documents pertaining to the title search on the property and the associated "litigation guarantee"; (3) e-mails from Joseph to Scott

Murch, Ofseyer's trial attorney; and (4) the same declaration by Davis that is described *ante*.

(6) *Lawyers' Mutual Argument*

Lawyers Mutual, in support of its anti-SLAPP motion, argued that Joseph's claims arose out of activities pertaining to the instant litigation, and therefore were barred by the litigation privilege. (Civ. Code, § 47.)

(7) *Analysis*

The only evidence offered by Joseph to prove his prima facie case was his own uncorroborated and self-serving declarations, which consisted of large amounts of hearsay. (See *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433 [self-serving declarations do not create an issue of fact].) Joseph's claims that the Lawyers colluded to disrupt his and John's relationship with Davis is contradicted by Davis's declaration disavowing an attorney-client relationship with John and Joseph related to the instant litigation. Joseph did not offer a contract, letter, or e-mail showing an attorney-client relationship between Davis and himself or John. In sum, Joseph has not established a prima facie case that the Lawyers contemplated an ulterior motive in using the judicial process, because it appears from the record that there was not an attorney-client relationship with Davis that the Lawyers could interrupt. Further, Joseph has not shown that the Lawyers committed a willful act in the use of the process not proper in the regular conduct of the proceedings, because his only evidence is hearsay. Accordingly, the trial court did not err by concluding that Joseph was not likely to prevail on his abuse of process claims.

Joseph contends that he established a prima facie case for abuse of process against the Lawyers. In Joseph’s opening brief, he asserts that he asked the trial court to take judicial notice of a variety of documents; Joseph does not support this assertion with a citation to the record, nor does he explain whether the trial court granted his request for judicial notice. Next, Joseph cites to approximately 150 pages of his appellant’s appendix and argues that he “introduced” a variety of documents tending to prove his conspiracy allegations against the Lawyers. Our review of the 150 pages shows that most of them are marked sequentially as “Request 1,” “Request 2,” etc. Joseph does not cite to the record to show that the trial court accepted his requests for judicial notice. Accordingly, we find Joseph’s argument—that he established a prima facie case—to be unpersuasive.

Moreover, to the extent that Joseph could demonstrate a prima facie case for abuse of process, his claims are barred by the litigation privilege. (Civ. Code, § 47.) “The litigation privilege immunizes litigants from liability for torts, other than malicious prosecution, which arise from communications in judicial proceedings. [Citation.] The privilege generally applies to any communication by a litigant in a judicial proceeding that is made ‘to achieve the objects of the litigation’ and has ‘some connection or logical relation to the action.’ [Citation.] The primary purpose of the privilege is to afford litigants ‘the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions.’ [Citation.] [¶] A threshold issue with respect to the privilege is whether the injury arose from ‘communicative acts,’ which

are privileged, or ‘noncommunicative conduct,’ which is not. [Citation.]” (*Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 770.)

Joseph seeks to hold the Lawyers liable for speaking to one another, filing an answer, filing a judgment on the pleadings, and moving to dismiss causes of action.

“Pleadings and process in a case are generally viewed as privileged communications.

[Citations.]” (*Navellier v. Sletten, supra*, 106 Cal.App.4th at pp. 770-771.)

Consequently, Joseph’s claims arise from the Lawyers’ communicative acts related to the instant litigation. Therefore, the litigation privilege bars Joseph’s abuse of process claims. (Civ. Code, § 47.)

Joseph argues that the litigation privilege does not bar his abuse of process claims. Joseph asserts that the communications at issue were not made during judicial proceedings. Contrary to Joseph’s position, “[t]he requirement that statements be made ‘in’ judicial proceedings does not limit the privilege to the pleadings and the evidence offered in court. [Citation.] A publication is privileged when it is ‘required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is invoked.’ [Citation.] Thus, publications made ‘in the course of a judicial proceeding’ can include communications made prior to the commencement of a lawsuit. [Citations.]” (*Wilton v. Mountain Wood Homeowners Assn.* (1993) 18 Cal.App.4th 565, 569, fn. omitted].) Based upon the foregoing rules and principles, the Lawyers’ discussions about the instant litigation were privileged, even though they

occurred outside of a courtroom. Accordingly, we find Joseph's argument unpersuasive.

b) Malicious Interference

Joseph has titled his ninth cause of action "Malicious Interference with Attorney-Client Relationship." Our review of Joseph's allegations leads us to infer that Joseph is actually asserting the tort commonly known as "intentional interference with a contractual relationship."

The elements of the tort "intentional interference with a contractual relationship" are: "(1) . . . a valid contract existed between the plaintiff and another party; (2) . . . the defendant had knowledge of the contract and intended to induce a breach thereof; (3) . . . the contract was breached; (4) as a proximate result of the defendant's wrongful or unjustified conduct;" (5) the plaintiff suffered damages. (*Abrams & Fox, Inc. v. Briney* (1974) 39 Cal.App.3d 604, 607-608.)

Joseph introduced his own uncorroborated declaration that John had an attorney-client relationship with Davis. Warford, RMK, Ofseyer, and Nethery & Ofseyer introduced Davis's declaration, which disavowed an attorney-client relationship with John and/or Joseph. Joseph did not provide any independent proof of a contractual relationship with Davis, such as e-mails, a letter, or a contract. Consequently, Joseph has not shown that he is likely to prevail on the merits of his claim because he has not made a prima facie showing that a contract existed between John and Davis.

Joseph argues that he introduced documents from Davis that demonstrate Davis was actively representing Henry's and Joseph's interests in the property.<sup>6</sup> Again, Henry cites to approximately 150 pages of his appellant's appendix to support his assertion; however, the pages are marked as though they are part of a packaged request for judicial notice, but Joseph does not cite to a trial court ruling granting the request for judicial notice. Therefore, we find Joseph's argument unpersuasive.

Moreover, to the extent that Joseph could prove a prima facie case for intentional interference with a contractual relationship, his claims are barred by the litigation privilege. As noted *ante*, the litigation privilege bars all causes of action concerning communications which are connected to judicial proceedings. Joseph has asserted that the Lawyers interfered with John's and Davis's contractual relationship by speaking to one another about the case, filing an answer, filing a judgment on the pleadings, and moving to dismiss causes of action. The foregoing actions are protected by the litigation privilege. Accordingly, Joseph's causes of action are barred.

c) Slander of Title

Joseph contends that he established a prima facie case for slander of title against Ofseyer and Nethery & Ofseyer.

"Slander of title occurs when there is an unprivileged publication of a false statement which disparages title to property and causes pecuniary loss. [Citations.]" (*Stalberg v. Western Title Ins. Co.* (1994) 27 Cal.App.4th 925, 929.)

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<sup>6</sup> When discussing this contention, Joseph writes, "Davis was actively defending Henry Billings's and appellant's interests," despite Joseph's repeated allegations that *John* and Davis had an attorney-client relationship.

In Joseph's supplemental declaration in support of his opposition to the anti-SLAPP motions, he declared that Ofseyer and Nethery & Ofseyer slandered his title to the property by (1) recording a fraudulent "Affidavit of Death of Joint Tenant against the property"; (2) failing to investigate Antoinette's claim that she held the property in joint tenancy; and (3) executing a lien against the property. In Joseph's supplemental declaration, in the section pertaining to his slander of title cause of action, Joseph referred to and quoted from several of the documents included in his trial court request for judicial notice. For example, Joseph cited to one document as "(See note 22 Request for Judicial Notice.)" Joseph does not cite to the record to show that the trial court granted his request for judicial notice.

Ofseyer and Nethery & Ofseyer assert that they did not place a lien on the property, rather, they obtained a litigation guarantee for their representation of Antoinette. Ofseyer and Nethery & Ofseyer submitted a variety of documents related to Antoinette's litigation guarantee. The litigation guarantee was issued by First American Title Insurance Company and guaranteed that Antoinette held title to the property and that First American would protect Nethery & Ofseyer from any inaccuracies in the title search.

In sum, Joseph did not establish an unprivileged publication of a false statement by Ofseyer and Nethery & Ofseyer, because Joseph did not produce copies of the allegedly false affidavit or the alleged lien. Accordingly, we conclude that Joseph has not established a prima facie case for slander of title.

### 3. CONCLUSION

The trial court did not err by granting the anti-SLAPP motions because the Lawyers established that their activities were protected, and Joseph did not establish that he is likely to prevail on his causes of action.

#### B. DUE PROCESS

Joseph contends that the trial court denied him due process when it (1) refused to allow him to orally present his opposition to the lawyer's anti-SLAPP motions; (2) rejected his ex parte application for leave to conduct discovery on shortened time, or alternatively, shortening time for a noticed discovery motion; (3) denied his ex parte application to vacate the anti-SLAPP hearing date and to compel Davis's attendance at a deposition. We disagree.

#### 1. ORAL OPPOSITION

Joseph contends that the trial court denied him due process by refusing to allow him to orally present his opposition to the Lawyers' anti-SLAPP motions.

"The fundamental requisite of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. [Citation.]" (*Cordova v. Vons Grocery Co.* (1987) 196 Cal.App.3d 1526, 1531.) We review this constitutional issue de novo. (*Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425, 433.)

The trial court called the hearing on the Lawyers' anti-SLAPP motion on December 29, as scheduled. The Lawyers were present for the hearing, and John appeared via courtcall. The trial court asked if anyone had heard from Joseph, who was not present at the hearing. Warford and RMK's trial attorney said that he had

exchanged e-mails with Joseph on December 23 or 24, and expected Joseph to attend the hearing. The trial court gave its tentative ruling and the reasons for the ruling. After the trial court completed its explanation for the tentative ruling, Joseph entered the courtroom.

The trial court excused Joseph's lateness and explained that it had tentatively ruled in the Lawyers' favor. Joseph said, "That is a bad idea." The trial court responded, "I am certainly willing to listen to anything you have to say." Joseph told the court that he wanted it to reread the tentative ruling, but the trial court refused, and reminded Joseph that the gist of the ruling was that the anti-SLAPP motions were granted. Joseph then said, "So I guess I will start at the beginning." The court told Joseph to "[s]tart whe[r]ever you wish."

Joseph told the trial court that the anti-SLAPP hearing was not conducted within the 30-day statutory timeframe. The court explained that the docket conditions required a later hearing date, so the lateness of the hearing was "not an issue." The court then asked Joseph, "Do you have anything new to add to these pleadings?" Joseph again discussed the hearing being scheduled beyond the 30-day statutory deadline. The trial court asked Joseph, "Do you want to deal with the substance of the motion?" Joseph again argued that the hearing was untimely because it was not scheduled within the 30-day deadline. The court again asked Joseph, "Do you want to deal with the substance of the motions?"

At that point, Joseph argued that Lawyers Mutual did not have standing to bring the anti-SLAPP motion. Joseph asked the court, "Is there a reason why you think they

have standing to bring that motion?” The court reminded Joseph that the hearing was not an opportunity to question the court, rather, it was an opportunity to argue the motion. The court asked Joseph not to “repeat things that [he has] in [his] pleadings.” Joseph told the court that it was not clear to him “what the court knows is in the pleadings and what isn’t in the pleadings.” The court responded, “Well, I have read the pleadings. So far we haven’t addressed any new matter, so the court is going to adopt as [its] final ruling the tentative ruling that it previously announced.”

Contrary to Joseph’s position, the record reflects that the trial court gave Joseph ample opportunity to supplement the arguments raised in his opposition papers, despite Joseph’s late arrival to the hearing; however, Joseph disregarded the trial court’s directions. In sum, the record does not reflect a denial of due process.

## 2. APPLICATION FOR DISCOVERY

Joseph contends that the trial court denied him due process when it rejected his ex parte application for leave to conduct discovery on shortened time or, alternatively, shortening time for a noticed motion.

The filing of an anti-SLAPP motion automatically stays all discovery in the case. However, “the court, on *noticed motion* and for good cause shown, may order that specified discovery be conducted . . . .” (§ 425.16, subd. (g), italics added.) Because anti-SLAPP motions are typically filed early in the proceedings, before the parties have had an opportunity to conduct much, or any, discovery, appellate courts have cautioned trial courts to protect the due process rights of plaintiffs responding to such motions by exercising their discretion under section 425.16, subdivision (g), liberally, and

authorizing “reasonable and specified discovery timely petitioned for by a plaintiff . . . , when evidence to establish a prima facie case is reasonably shown to be held, or known, by defendant or its agents and employees.” (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 868.)

We review a trial court’s order permitting or refusing discovery under section 425.16, subdivision (g), for an abuse of discretion. (*Tuchscher Development Enterprises, Inc. v. San Diego Port Dist.* (2003) 106 Cal.App.4th 1219, 1247.) ““Under this standard the reviewing court will not disturb the trial court’s decision unless it “has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.”” [Citation.]” (*Ibid.*) A reasonable exercise of the trial court’s discretion under the anti-SLAPP statute’s discovery provision (§ 425.16, subd. (g)) does not violate a plaintiff’s right to due process of law. (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co., supra*, 37 Cal.App.4th at p. 867.) On the other hand, a plaintiff’s due process rights are implicated by an arbitrary or capricious denial of discovery needed to oppose an anti-SLAPP motion. (*Id.* at pp. 867-868.)

An applicant for ex parte relief “must make an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte.” (Cal. Rules of Court, rule 3.1202(c).) Like a noticed motion, a trial court’s ruling on an ex parte application for discovery is reviewed for an abuse of discretion. (*Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1061.)

The trial court's ruling reflects that it denied Joseph's application because Joseph did not satisfy the requirements for ex parte relief. In a declaration attached to the application, Joseph declared that he needed to conduct discovery to establish his prima facie case against the Lawyers. Joseph also declared that he expected to discover admissions and documents proving that the Lawyers colluded to prevent Davis from properly representing John's and Joseph's interests. Joseph's third amended cross-complaint was filed on September 16, 2008. The first anti-SLAPP motion was filed on September 19, 2008. Joseph filed his ex parte application on October 14, 2008.

Instead of acting diligently to initiate discovery, Joseph waited approximately one month after the first anti-SLAPP motion was filed to apply, ex parte, for an order allowing him to take discovery on shortened time, or shortening time for a noticed motion. Joseph does not explain why he waited one month to begin the discovery process, e.g., he was surprised by the swiftness of the anti-SLAPP motion procedure, or he suffered a medical emergency. Further, the declaration does not explain the immediate danger or irreparable harm that would be suffered by Joseph, e.g., the Lawyers would dispose of evidence. Moreover, we note that the anti-SLAPP statute specifically provides that a request to conduct discovery must be made by "noticed motion." (§ 425.16, subd. (g); see also *Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286 [trial court would have been derelict in its duty if it did not follow the directions of the discovery statute].) Consequently, we conclude that the trial court did not abuse its discretion, or deny Joseph due process, by denying his ex parte application for leave to conduct discovery on shortened time or, alternatively,

shortening time for a noticed motion, because the trial court reasonably concluded that Joseph did not satisfy the requirements for ex parte relief.

Joseph argues that the trial court erred because he established good cause for conducting discovery. Joseph's contention focuses on the test applicable to a noticed motion for discovery. (§ 425.16, subd. (g); *Contemporary Services Corp. v. Staff Pro Inc.*, *supra*, 152 Cal.App.4th at p. 1061.) When the trial court denied Joseph's ex parte application, it told him that he would be required "to file a formal noticed motion if [he] want[ed] these matters to be heard." Accordingly, Joseph's argument fails to address the trial court's reason for denying his application, i.e., Joseph did not meet the requirements for ex parte relief. Therefore, we find Joseph's argument unpersuasive.

### 3. APPLICATION TO COMPEL TESTIMONY

Joseph contends that the trial court erred by denying his ex parte application to vacate the anti-SLAPP hearing date and to compel Davis's attendance at a deposition.

On November 12, 2008, Joseph filed an ex parte application to (1) vacate the November 18, 2008, hearing on the anti-SLAPP motions, and (2) compel Davis to appear for a deposition and produce documents. In a declaration attached to the application, Joseph declared that he served Davis with a notice to appear at a deposition, scheduled for November 7, 2008, and to produce documents; however, Davis did not appear or produce documents. In his declaration, Joseph argued that the statutory stay of discovery proceedings applied only to the cross-defendants who filed anti-SLAPP motions, and since Davis did not file such a motion, discovery was not stayed as to her.

Joseph declared that it would be impossible for him to receive a fair hearing on the anti-SLAPP motions without Davis's testimony and documents.

The trial court denied Joseph's ex parte application, because all discovery in the matter, even discovery related to a cross-defendant that did not file an anti-SLAPP motion was stayed when the Lawyers filed their anti-SLAPP motions. (§ 425.16, subd. (g).) However, due to the multitude of motions that had been filed in the case—the trial court cited at least 17 pending motions—the trial court continued the date of the hearing on the anti-SLAPP motions to December 29, 2008.

The standard of review generally applicable to discovery motions, and in particular motions to compel discovery, is abuse of discretion. (*Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1123.) However, “where the propriety of a discovery order turns on statutory interpretation, an appellate court may determine the issue de novo as a question of law. [Citation.]” (*Ibid.*) The trial court's denial of Joseph's motion was based upon an interpretation of the anti-SLAPP statute. Accordingly, we apply the de novo standard of review.

The anti-SLAPP statute provides: “All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.” (§ 425.16, subd. (g).)

The purpose of the anti-SLAPP statute is to, at an early stage in the litigation, dispose of meritless lawsuits that seek to chill the valid exercise of constitutional rights, in order to prevent the plaintiff from depleting the defendants' energy and resources. (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.) The statutory provision staying discovery, while an anti-SLAPP motion is pending, serves to effectuate the foregoing legislative intent of preventing meritless SLAPP suits from costing defendants great amounts of time and money. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 65.) If a plaintiff were allowed to proceed with discovery related to defendants that *did not* file anti-SLAPP motions, then the purpose of the anti-SLAPP statute would be defeated, because the defendants that *did* file anti-SLAPP motions would likely need to attend the depositions of the defendants who *did not* file anti-SLAPP motions, in order to preserve their objections. (See, e.g., § 2025.460, subd. (a) [claim of privilege is waived unless a specific objection is made during the deposition].) Further, the plain language of the anti-SLAPP statute reflects that “[a]ll discovery proceedings in the action shall be stayed”; there is nothing limiting the stay to parties who filed anti-SLAPP motions, or exempting parties who did not file anti-SLAPP motions. (§ 425.16, subd. (g).) In sum, it appears from the plain language of the statute and from the purpose of the statute that the stay of discovery proceedings is applicable to all parties, not just the parties involved in the anti-SLAPP motion. Accordingly, we conclude that the trial court did not err.

Joseph contends that the trial court denied him due process because he was entitled to discovery pursuant to section 2025.280. The foregoing code section provides

that a party to an action is required to attend a deposition and testify, upon proper notice. (§ 2025.280.) Joseph’s argument does not persuade us that the trial court erred in its interpretation of section 425.16, subdivision (g).

C. STANDING

Joseph contends that the Lawyers did not have standing to bring anti-SLAPP motions against his complaint. We disagree.

We independently review Joseph’s contention concerning standing. (*Reycraft v. Lee* (2009) 177 Cal.App.4th 1211, 1217.)

The anti-SLAPP statute reads in relevant part, “a prevailing defendant on a special motion to strike.” (§ 425.16, subd. (c).) Based upon this statutory language, it can be reasonably inferred that defendants have standing to bring anti-SLAPP motions. The anti-SLAPP statute also reflects that the term “‘defendant’ includes ‘cross-defendant.’” (§ 425.16, subd. (h).) The Lawyers were named as cross-defendants in Joseph’s complaint; therefore they had standing to bring their anti-SLAPP motions.

Joseph asserts that the Lawyers do not have standing to bring anti-SLAPP motions, because Joseph did not previously sue them, and therefore Joseph’s current lawsuit cannot qualify as “retaliat[ion] against them for petitioning activities.” Contrary to Joseph’s position, an attorney may bring a special motion to strike a cause of action arising from petitioning activity undertaken on behalf of the attorney’s client. (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1262, fn. 6.) Joseph’s current lawsuit related to (1) Lawyers Mutual retaining Warford and RMK to represent Davis in Antoinette’s malpractice lawsuit; and (2) Ofseyer and Nethery & Ofseyer’s

representation of Antoinette in her lawsuit related to the property. Accordingly, the Lawyers can properly move for anti-SLAPP protection based upon the argument that Joseph is retaliating against them for their actions related to Antoinette's lawsuit.

D. JURISDICTION

1. *HEARING ON THE MOTIONS*

Joseph contends that the trial court lacked jurisdiction to rule upon the Lawyers' anti-SLAPP motions because the hearings were conducted more than 30 days after motions were served. We disagree.

The anti-SLAPP statute provides: "The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing." (§ 425.16, subd. (f).) The 30-day timeframe in the anti-SLAPP statute "is not jurisdictional in the fundamental sense of subject matter jurisdiction or personal jurisdiction. Instead, it is jurisdictional in the sense that it deprives the court of power 'to act except in a particular manner,'" i.e., an untimely hearing on an anti-SLAPP motion may cause the motion to be denied by operation of law. (*San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn.* (2004) 125 Cal.App.4th 343, 351.)

The issue of whether the trial court acted in excess of its jurisdiction is a question of law that is subject to our independent review. (*Baqleh v. Superior Court* (2002) 100 Cal.App.4th 478, 485.)

Joseph applied ex parte to vacate the November 18, 2008 hearing date for the Lawyers' anti-SLAPP motions. The trial court denied Joseph's ex parte application;

however, the court continued the hearing on the motions to December 29. When changing the date, the trial court said, “And the reason why I’m doing that is on this case I’ve been advised on November 18th, 2008, there are 13 motions set on this case.” Additionally, the court said, “On December 30th I understand there are two demurrers and a motion to strike [the] cross-complaint pending that will be heard on that date as well as—well, all those motions will be heard on that date.” The trial court explained, “And why I’ve set them on those dates, because I checked my calendar and those dates are relatively clear. So I’ll have time to spend on this case.”

The trial court explained that there were 13 motions pending in this action, and that it needed the extra time with the case materials to provide the parties with a full and fair hearing. We have no reason to believe that the trial court misrepresented the condition of its docket. Accordingly, we conclude that the trial court properly scheduled the motion hearing beyond the 30-day timeframe because the docket conditions of the court required a later hearing. (§ 425.16, subd. (f).)

Joseph contends that the November 18 hearing date was specially reserved for the hearing on the anti-SLAPP motions, and therefore the docket was clear for the hearing on that date. The trial court explained that there were 13 motions pending in this action all scheduled for November 18. The trial court’s explanation that the docket was too full for the anti-SLAPP motions to be fully and fairly heard that same day is reasonable. Accordingly, we do not find Joseph’s argument persuasive.

Joseph asserts that the reporter erred when she transcribed the court’s comment that 13 motions were pending for November 18. Joseph asserts that the court actually

said, “there are too many motions pending in this case,” but the reporter mistakenly transcribed the comment as, “there are 13 motions set on this case.” Contrary to Joseph’s position, the register of actions reflects that the following motions were scheduled to be heard on November 18: (1) Warford and RMK’s motion re: demurrer to John’s first amended cross-complaint; (2) Warford and RMK’s motion to strike John’s first amended cross-complaint; (3) Warford and RMK’s motion re: demurrer to Joseph’s third amended cross-complaint; (4) Warford and RMK’s special motion to strike Joseph’s third amended cross-complaint; (5) Warford and RMK’s motion to strike portions of Joseph’s third amended cross-complaint; (6) Davis’s special motion to strike John’s first amended complaint; (7) Ofseyer and Nethery & Ofseyer’s special motion to strike Joseph’s third amended complaint; (8) Ofseyer and Nethery & Ofseyer’s special motion to strike John’s first amended complaint; (9) Lawyers Mutual’s special motion to strike John’s first amended complaint; (10) Lawyers Mutual’s special motion to strike Joseph’s third amended complaint; (11) Joseph’s ex parte application for leave to file a memorandum of points and authorities for a hearing scheduled November 20. Based upon our review of the register of actions, we are not persuaded that the reporter incorrectly transcribed the trial court’s statements. (See generally *People v. Malabag* (1997) 51 Cal.App.4th 1419, 1422 [circumstances of an individual case determine whether a clerk’s transcript or reporter’s transcript controls, if a record is contradictory].) Therefore, we find Joseph’s argument unpersuasive.

## 2. JUDGES

Joseph contends that Judge Sachs acted in excess of his jurisdiction when he vacated the November 18 hearing date reserved by Judge Garza. We note that Joseph's argument is specious since he applied ex parte for the November 18 hearing date to be vacated; however, we will address his contention.

Nothing in the anti-SLAPP statute provides that all hearings pertaining to the motion must be heard by the same judge. (§ 425.16.) On October 16, 2008, Judge Garza told the parties, "[I]t will be Judge Sachs ruling on the anti-SLAPP motion at that time. So the parties will need to get Judge Sachs up to speed on all of the affairs that have been going on in this case and let him know." Judge Garza explained that Judge Sachs would be "physically in this department in this seat. He will be hearing all of the matters that are presently on this calendar." Joseph did not raise an objection. Based upon our review of the relevant statute and the record, we conclude that Judge Sachs did not exceed his authority by continuing the anti-SLAPP hearing to December 29, because there is nothing indicating that continuing the hearing date set by Judge Garza, was beyond Judge Sachs's authority.

Joseph cites *International Insurance Company v. Superior Court* (1998) 62 Cal.App.4th 784, to support his position that the trial court erred. The foregoing case discusses section 1008. (*International Insurance*, at pp. 787-788.) Section 1008, subdivision (a), provides that if a trial court refuses or grants an application for an order, then a party may seek reconsideration of that order based upon new or different facts, circumstances, or law. We do not find Joseph's argument persuasive because Judge

Sachs continued a hearing date, he did not reconsider an order that was based upon argument or evidence.

E. ATTORNEYS' FEES

Joseph contends that the trial court erred by awarding attorneys' fees to the Lawyers. Joseph asserts that attorneys' fees should not have been awarded because (1) the Lawyers lacked standing to bring the anti-SLAPP motions; (2) the anti-SLAPP motions were not heard within the 30-day statutory timeframe; (3) the trial court denied Joseph due process by not giving him an opportunity to be heard at the hearing on the anti-SLAPP motions; and (4) the Lawyers were awarded separate fees for work done by a single attorney.

We have addressed most of the arguments raised in this section in other areas of this opinion. Further, our review of the record shows that each of the Lawyers submitted different anti-SLAPP motions, i.e., the motions were not identical.

Accordingly, we find Joseph's argument unpersuasive.

**DISPOSITION**

The judgments are affirmed. Costs are awarded to respondents.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ MILLER

J.

We concur:

/s/ RAMIREZ

P. J.

/s/ RICHLI

J.